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No. 99-1169

In The

Supreme Court of the United States

NEW PRIME, INC. D/B/A PRIME, INC., and SUCCESS LEASING, INC.,

Petitioners,

v.

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Eighth Circuit's decision below is correct in holding that the judicial enforcement provisions of 49 U.S.C. § 14704(a) establish a private right of action for direct judicial enforcement of federal motor carrier leasing regulations.

LIST OF PARTIES TO PROCEEDINGS BELOW

Petitioners (Defendants-Appellants Below)

New Prime, Inc. d/b/a Prime, Inc., and Success Leasing, Inc.

Respondents (Plaintiffs-Appellees Below)

Owner-Operator Independent Drivers Association, Inc., Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer.

The Owner-Operator Independent Drivers Association, Inc., does not have any parent companies or non-wholly owned subsidiaries.

Amicus Curiae

The American Trucking Association, Inc. ("ATA") was a party to the proceeding before the U.S. Department of Transportation, Federal Highway Administration. ATA abandoned its party status and appeared before the Eighth Circuit as *Amicus Curiae*. ATA has requested permission to file a brief as *Amicus Curiae* before this Court.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES TO PROCEEDINGS BELOW	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI	1
STATUTES INVOLVED	1
STATEMENT OF THE CASE	1
A. Regulatory Context	2
B. Proceedings Before the District Court	7
C. Proceedings Before the FHWA	7
D. The Opinion of the Eighth Circuit	9
REASONS FOR DENYING THE WRIT	10
I. THE OPINION OF THE EIGHTH CIRCUIT IS CLEARLY CORRECT	11
A. Private Right of Action – § 14704(a)	11
B. Primary Jurisdiction	14
II. THERE IS NO CONFUSION AMONG THE LOWER COURTS	15
CONCLUSION	19

TABLE OF AUTHORITIES

Page

CASES:

City of Laredo v. Texas Mexican Ry.,
935 F. Supp. 895 (S.D. Tex. 1996).....15, 17

DeBruce Grain, Inc. v. Union Pacific R.R.,
983 F. Supp. 1210 (W.D. Mo. 1997),
aff'd on other grounds, 149 F.3d 787 (8th Cir. 1998).....15, 17

Heckler v. Chaney,
470 U.S. 821 (1985) 14

Pennsylvania Dept. of Corrections, et al. v. Yeskey,
524 U.S. 206 (1998) 12 n.3

Renteria v. K & R Transp., Inc.,
Case No. CV-98-290MRP (C.D. Cal. Feb. 23, 1999).....17, 18

Trainmen v. Baltimore & Ohio R. Co.,
331 U.S. 519 (1947) 12 n.3

Wisconsin Public Intervenor v. Mortier,
501 U.S. 597 (1991) 13, 14

STATUTES:

28 U.S.C. § 1658.....1, 18

49 U.S.C. §§ 10101-11908..... 16 n.4

49 U.S.C. § 10501.....1, 16, 17

49 U.S.C. § 11704.....15, 17

49 U.S.C. §§ 13101-14914..... 16 n.4

49 U.S.C. § 13103..... 16

49 U.S.C. § 13301(a) 16 n.5

TABLE OF AUTHORITIES – Continued

Page

49 U.S.C. § 13501 ..... 1, 16, 16 n.5

49 U.S.C. § 14102 ..... 2, 12, 16 n.5

49 U.S.C. § 14704 ..... *passim*

49 U.S.C. § 14704(a) ..... i, 2, 5, 9, 10, 11, 15

49 U.S.C. § 14704(a)(1) 10, 11, 12, 13

49 U.S.C. § 14704(a)(2) 10, 12, 13, 14

49 U.S.C. § 14705 ..... 1, 17, 18

ICC Termination Act of 1995,
Pub. L. No. 104-88, 109 Stat. 803 ..... 3, 4, 4 n.1, 5

Motor Carrier Act of 1980,
Pub. L. No. 96-296, 94 Stat. 793 3

REGULATIONS:

49 C.F.R. Part 376 2

FEDERAL MATERIAL AND REPORTS:

ICC Termination Act of 1995: Report of the Committee on Transportation and Infrastructure on H.R. 2539, H.R. Rep. No. 104-311 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793 ..... *passim*

Interstate Commerce Commission Sunset Act of 1995: Report of the Committee on Commerce, Science, and Transportation on S. 1396, S. Rep. No. 104-176 (1995) 4

TABLE OF AUTHORITIES – Continued

Page

Motor Carrier Act of 1980: Report from the Committee on Public Works and Transportation, H.R. Rep. No. 96-1069 (1980), *reprinted in* 1980 U.S.C.C.A.N. 2283 3

U.S. Dept. of Transportation, *Report on the Functions of the Interstate Commerce Commission* (July 1995) 6

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Owner-Operator Independent Drivers Association, Inc., et al., on behalf of themselves and others similarly situated, respectfully request that this Court deny the Petition for Writ of Certiorari of Petitioners New Prime, Inc., d/b/a Prime, Inc. and Success Leasing, Inc., seeking review of the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on August 10, 1999.

STATUTES INVOLVED

This brief involves federal statutes 28 U.S.C. § 1658, 49 U.S.C. § 10501, and 49 U.S.C. § 13501, the complete texts of which are set forth in the Appendix to this brief. (App. 1-App. 4). Also involved are 49 U.S.C. §§ 14704, 14705. (Pet. App. at 34a-39a).

STATEMENT OF THE CASE

Respondent Owner-Operator Independent Drivers Association, Inc. ("OOIDA") is a trade association of approximately 47,000 members that has represented the interests of owner-operators and other small business truckers since 1973. "Owner-operators" are traditionally small business truckers who own and operate a truck tractor (of a tractor-trailer combination). They lease their tractor and their driving services to a motor carrier (such as Petitioners) owning a fleet of trailers, agreeing to haul the motor carrier's freight-laden trailers in interstate

commerce in exchange for specified compensation. The terms of these leases between a motor carrier and an owner-operator are governed by 49 U.S.C. § 14102 and 49 C.F.R. Part 376. Respondents brought suit against Petitioners under 49 U.S.C. § 14704(a) (Pet. App. at 34a-35a), a private judicial enforcement statute, for violations of the federal motor carrier leasing regulations contained in 49 C.F.R. Part 376. Petitioners now seek review of the Eighth Circuit's ruling that the private right of action in § 14704(a) enables owner-operators to obtain relief for violations of the leasing regulations in federal court.

A. Regulatory Context

The private civil enforcement statute at issue in this case marks the culmination of Congress' "15-year effort to deregulat[e] the motor carrier industry [in the United States]," *ICC Termination Act of 1995: Report of the Committee on Transportation and Infrastructure on H.R. 2539*, H.R. Rep. No. 104-311, at 91 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793, 803 (the "1995 House Report"). Beginning with the Interstate Commerce Act of 1935, a growing bureaucracy in the Interstate Commerce Commission ("ICC") regulated virtually every aspect of the trucking industry – from who could obtain authorization to engage in interstate commercial motor transport, to what rates they could charge, to which routes they could travel to transport property. *Id.* During this period, the ICC's dispute resolution programs were the principal avenue for obtaining redress for violations of federal motor carrier regulations.

By 1980, an exhaustive congressional study on federal regulation of the motor carrier industry demonstrated the need to curtail governmental involvement in the trucking industry. The House of Representatives committee report resulting from that study recommended enactment of the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793 (codified as amended in scattered sections of Title 49 U.S.C.), plainly stating that the purpose of the new legislation was "to reduce unnecessary regulation by the Federal Government," and that congressional findings suggested the ICC be "admonished to stay within the powers specifically vested in it by the revised law." *Motor Carrier Act of 1980: Report from the Committee on Public Works and Transportation*, H.R. Rep. No. 96-1069, at 1, 10-11 (1980), *reprinted in* 1980 U.S.C.C.A.N. 2283, 2292-93. Subsequently, Congress continued to enact legislation further deregulating the motor carrier industry and whittling away the size and scope of the ICC. *See* 1995 House Report at 82, 91-93, 1995 U.S.C.C.A.N. at 794, 803-805.

In 1995, Congress took a significant step forward in its motor carrier deregulation plan by abolishing the ICC and creating a private right of judicial enforcement (49 U.S.C. § 14704). Enforcement of many motor carrier regulations were removed from agency control and put into the hands of the individual parties involved. *See generally*, ICC Termination Act of 1995 ("ICCTA"), Pub. L. No. 104-88, 109 Stat. 803 (codified as amended in scattered

sections of Title 49 U.S.C.), effective January 1, 1996;[1] *see also* 1995 House Report at 87-88, 1995 U.S.C.C.A.N. at 799-800.

In enacting the ICCTA, Congress expressed a conscious intent to depart from the ICC-run dispute resolution programs, including those for "owner-operator leasing," *see* 1995 House Report at 87, 1995 U.S.C.C.A.N. at 799, and to reduce the Federal Government's enforcement burden through the establishment of a private right of action. Under the heading "*Existing ICC functions that have been eliminated, deregulated or reformed,*" the 1995 House Report confirmed that "[f]ederal resolution of routine commercial disputes *has been eliminated.*" *Id.* at 84, 1995 U.S.C.C.A.N. at 796 (emphasis added). The corresponding Senate committee report announced, "[t]he Committee also contemplates that . . . the ICC's traditional function of informally resolving disputes in these areas [including motor carrier leasing rules] would not be continued. *The [ICCTA] bill enables aggrieved parties to take such disputes directly to the courts.*" *Interstate Commerce Commission Sunset Act of 1995: Report of the Committee on Commerce, Science, and Transportation on S. 1396*, S. Rep. No. 104-176, at 11 (1995) (emphasis added).

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[1] Under the ICCTA, all of the ICC's authority and functions were transferred to the U.S. Department of Transportation ("DOT") and the Surface Transportation Board (the "Board"). The Board is an independent agency within the DOT, and was created upon termination of the ICC. It oversees federal administration of several modes of interstate and intrastate transportation, primarily railroads. DOT is responsible for much of the motor carrier regulation surviving the enactment of the ICCTA.

The legislative plan for filling the gap in enforcement left by the termination of the ICC's dispute resolution programs was outlined as follows:

> The [ICCTA] bill transfers responsibility for all the areas in which the ICC resolves disputes to the Secretary [of the DOT] (except passenger intercarrier disputes). The Committee [on Transportation and Infrastructure] does not believe that DOT should allocate scarce resources to resolving these essentially private disputes, and *specifically directs that DOT should not continue the dispute resolution functions in these areas. The bill provides that private parties may bring actions in court to enforce the provisions of the Motor Carrier Act*. This change will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved – by the parties.

1995 House Report at 87-88, 1995 U.S.C.C.A.N. at 799-800 (emphasis added); *see also* 1995 House Report at 117, 1995 U.S.C.C.A.N. at 829 ("the Committee directs that upon transfer [of ICC duties to DOT], *DOT should not continue any dispute resolution functions regarding the ICC leasing rules, but rather only oversee the regulations*") (emphasis added).

Commenting on the specific statutory provision that establishes the new role of private individuals in dispute resolution for motor carrier regulations, 49 U.S.C. § 14704(a), the 1995 House Report explained:

> [Section 14704] provides for *private enforcement* of the provisions of the Motor Carrier Act *in court*. This expands the current law which only

> permits complaints brought under the Act to be brought before the ICC.

1995 House Report at 120-21, 1995 U.S.C.C.A.N. at 832-33 (emphasis added).

Further, the DOT itself, prior to the passage of the ICCTA, reported to Congress on the specific issue of private enforcement of the leasing regulations involved in this case.

> The leasing rules have no doubt provided protection to owner-operators in their dealings with regulated [motor] carriers. However, the cost of Federal enforcement of these rules has been significant. . . . *There does not appear to be sufficient justification to continue these enforcement expenses.*
>
> Given the uneven bargaining power of owner-operators, the small dollar amount of their claims, and the unique nature of their operations, *DOT recommends that . . . the leasing rules be retained in their present form. In lieu of Federal enforcement, owner-operators will be given the right of private action to enforce them.* . . .

U.S. Dept. of Transportation, *Report on the Functions of the Interstate Commerce Commission* 86 (July 1995) (emphasis added).

Since the enactment of the ICCTA, the Federal Highway Administration ("FHWA"), the agency within DOT responsible for administration of the federal motor carrier laws and regulations involved in this case, has interpreted the civil enforcement provisions in 49 U.S.C. § 14704 in accordance with this expressed intent to get enforcement of motor carrier leasing regulations out of

the hands of government and into the hands of the parties involved. *See infra* Section C. Proceedings Before the FHWA.

B. Proceedings Before the District Court

Pursuant to the private right of action under 49 U.S.C. § 14704, Respondents filed this class action suit charging that Petitioners' motor carrier lease agreements violate federal motor carrier leasing regulations, in that they unlawfully permit Petitioners to withhold and retain thousands of dollars in escrow funds belonging to owner-operators.

Petitioners moved to dismiss Respondents' complaint, arguing that "primary jurisdiction" over Respondents' claims rests with the DOT and the FHWA. The district court granted Petitioners' motion to dismiss, remarking that DOT should handle Respondents' claims because they are beyond the expertise of the district court, and for the sake of uniformity of agency decisions. (Pet. App. at 22a-23a). Despite its articulated need for agency guidance, however, the district court failed to refer Respondents' claims to the DOT, and instead entered a judgment dismissing Respondents' complaint outright. (Pet. App. at 23a). Respondents appealed to the Eighth Circuit.

C. Proceedings Before the FHWA

While their appeal was pending in the Eighth Circuit, Respondents submitted a petition for declaratory order to the FHWA. (Pet. App. at 40a-53a). Respondents requested

that the agency provide guidance on the issues implicated in the dismissed lawsuit, or in the alternative, declare that applicable law does not confer upon the FHWA primary jurisdiction over private commercial disputes involving the federal motor carrier leasing regulations, and that such disputes should be resolved by the federal courts pursuant to the ICCTA. (Pet. App. at 51a-53a).

On May 29, 1998, the FHWA issued a Notice (the "FHWA Notice") in which it announced that it would not exercise jurisdiction over Respondents' claims. (Pet. App. at 24a, 30a). No administrative proceeding or adjudication of the issues was conducted.[2] The agency also published the FHWA Notice in the Federal Register "to provide guidance to courts, carriers, owner-operators and other interested parties" regarding the agency's policy on

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[2] On June 24, 1998, Petitioners submitted to FHWA a motion for reconsideration of the FHWA Notice. The American Trucking Associations, Inc. (the "ATA"), a motor carrier association, also submitted to the FHWA its own petition for reconsideration. Both Petitioners and the ATA offered arguments that were substantively similar to those set forth in their briefs on appeal to the Eighth Circuit. On August 11, 1998, the FHWA denied Petitioners' and the ATA's respective requests for reconsideration, and Petitioners thereupon filed their petition for review of the FHWA Notice with the Eighth Circuit. Motor carrier Arctic Express, Inc., and its affiliate D&A Associates, Ltd., defendants in a separate action by OOIDA in the U.S. District Court for the Southern District of Ohio, filed their own challenge to the FHWA Notice via petition to the U.S. Court of Appeals for the Sixth Circuit. The Sixth Circuit transferred that petition to the Eighth Circuit for consolidation with those of Petitioners and ATA.

dispute resolution involving the leasing regulations. (Pet. App. at 24a-25a).

The FHWA confirmed that 49 U.S.C. § 14704 provides a private right of action to enforce motor carrier leasing regulations:

> The ICCTA expanded the rights and remedies of persons injured by carriers by providing for private enforcement of its provisions in court. *Under 49 U.S.C. § 14704, an injured party may seek both damages and injunctive relief against a motor carrier in federal district court to redress violations of part 376.*

(Pet. App. at 27a-28a) (emphasis added). Regarding the matter of primary jurisdiction, the FHWA observed that:

> [S]pecial expertise is generally not needed to resolve disputes regarding the part 376 truth-in-leasing regulations. These regulations contain specific, straightforward, non-technical requirements which a court is ordinarily competent to construe. *Consistent with Congressional intent underlying 49 U.S.C. § 14704, the FHWA will generally decline to exercise its primary jurisdiction with regard to court referrals involving violations of part 376.*

(Pet. App. at 29a) (emphasis added).

D. The Opinion of the Eighth Circuit

The Eighth Circuit found that 49 U.S.C. § 14704(a) creates a private right of action for injunctive relief and damages for violations of certain motor carrier leasing

regulations. (Pet. App. at 12a-14a). Focusing on the language of the statute, the court of appeals found that § 14704(a)(1) *expressly* creates a private right of action for injunctive relief (Pet. App. at 12a-13a), and that the explicit language of § 14704(a)(2) making motor carriers liable for damages arising from their violation of motor carrier laws supports the existence of a private right of action – a reading of the statutory language amply reinforced by the legislative history of the subsection (Pet. App. at 13a-14a). The Eighth Circuit denied review of the petitions challenging the FHWA Notice (Pet. App. at 17a), and reversed the district court dismissal of Respondents' complaint based on primary jurisdiction (Pet. App. at 15a-16a).

REASONS FOR DENYING THE WRIT

The Eighth Circuit's decision below is clearly correct. The court of appeals' opinion simply adheres to the plain language of the statute at issue, confirmed by the well-documented intent of Congress to provide parties injured by motor carriers a judicial forum in which to seek redress for violation of federal motor carrier regulations. In reaching its result, the Eighth Circuit never departed from commonly used methods of statutory interpretation established by this Court. Moreover, there are no conflicting court of appeals decisions. The result of the Eighth Circuit opinion is also in complete agreement with the determination of the FHWA that Section 14704(a) creates a private right of action for enforcing the federal motor carrier leasing regulations.

I. THE OPINION OF THE EIGHTH CIRCUIT IS CLEARLY CORRECT

In deciding this case, the Eighth Circuit followed standard rules of statutory interpretation approved by this Court. In each instance, the court of appeals adhered to the language of the statute at issue when determining its meaning, looking to the unambiguous legislative history of the statute only once when it perceived a drafting inconsistency, and then only to confirm the most plausible construction of the statute's plain language.

A. Private Right of Action – § 14704(a)

Respondents' appeal to the Eighth Circuit asserted that this case rightfully belongs in the district court, pursuant to the private right of action created by 49 U.S.C. § 14704. The Eighth Circuit began its analysis conservatively with a step-by-step examination of the statute itself, stating, "in all events our principal focus must be on the language of the relevant statutes." (Pet. App. at 7a). The court started with the first sentence of § 14704(a)(1), which provides a private right of action for enforcing an "order" of the DOT and its agencies. In spite of argument by the FHWA itself that the word "order" in the first sentence does include the agency's motor carrier leasing regulations, the court held that the plain language of the first sentence does not provide a private right of action to enforce agency *regulations*. (Pet. App. at 10a-11a).

The court of appeals then proceeded to the language of the second sentence of § 14704(a)(1), which states: "A

person may bring a civil action for injunctive relief for violations of sections 14102 [dealing with the DOT's general authority over motor carrier leases] and 14103." Again, following the plain language of the statute itself, the Eighth Circuit rejected Petitioners' argument that because this second sentence appears in a paragraph entitled, "Enforcement of order," the sentence is limited to actions to enforce agency *orders* only. (Pet. App. at 11a-12a). Rather, the court concluded that Congress never intended the second sentence to be limited to actions enforcing agency *orders* because: 1) section and subchapter titles cannot alter the plain meaning of a statute,[3] 2) the "plain language" of the second sentence of § 14704(a)(1) makes no mention of limitation to violations of agency *orders*, and 3) in legislative conference prior to enactment, the second sentence was appended to the end of § 14704(a)(1) from another subsection which had no connection to agency orders. (Pet. App. at 11a-12a). Thus, cautious deference to the plain language of the second sentence of § 14704(a)(1) led the court of appeals to the conclusion that the second sentence supports a private right of action for injunctive relief for violation of certain motor carrier regulations. (Pet. App. at 13a).

The court of appeals next reviewed the language of § 14704(a)(2), which states: "A carrier . . . is liable for damages sustained by a person as a result of an act or

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[3] *See Pennsylvania Dept. of Corrections, et al. v. Yeskey*, 524 U.S. 206, 212 (1998) (" 'The title of a statute . . . cannot limit the plain meaning of the text. For interpretive purposes, [it is] of use only when [it] shed[s] light on some ambiguous word or phrase' ") (*quoting Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528-529 (1947)).

omission of that carrier . . . in violation of this part [pertaining to interstate transport by motor carriers]." Here, the Eighth Circuit rejected Petitioners' argument that the "order" language appearing in the first sentence of § 14704(a)(1) limits the civil action referred to in § 14704(a)(2). Again, the court of appeals conservatively read the provisions according to the plain language of the statute:

> We decline to read these two subsections [(a)(1) and (a)(2)] as interrelated. They are separate parts of § 14704(a), which is entitled, "In General." Moreover, a review of § 14704 in the two bills that were sent to conference . . . reveals that the Conference Committee drafters reorganized this section in the final bill – the enforcement of agency orders section that is now § 14704(a)(1) and the damage remedy that is now § 14704(a)(2) were not previously linked.

(Pet. App. at 13a). Consequently, the court of appeals drew the appropriate conclusion that the plain language of § 14704(a)(2) establishes a private right of action for damages for violations of regulations, not merely violations of orders, because the plain language does not support limitation of paragraph (a)(2) by paragraph (a)(1), and because the most logical reading of the provision commands this result, *see generally Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 607-608 (1991) (Court followed "most plausible reading" of statutory language when Congress' intent was not explicit).

Although it had found that the most logical reading of the plain language of § 14704(a)(2) supports a private

right of action for damages for violation of agency regulations, the court of appeals noticed an inconsistency in the drafting of § 14704(a)(2). (Pet. App. at 13a-14a). The provision's grant of a remedy is explicit, while the right to bring an action that secures the remedy is implicit. Maintaining its fidelity to established principles of statutory interpretation, the Eighth Circuit rightly pointed out that "[i]n construing this inconsistently drafted statute, it is appropriate to use its legislative history to confirm the most plausible construction of a subsection's plain language." (Pet. App. at 14a (*citing Mortier*, 501 U.S. at 610 n.4 (1991))). Consequently, the court of appeals looked to the legislative history to *confirm* what it already deemed the most logical reading of § 14704(a)(2). As has been discussed above, the legislative history clearly supports that reading of § 14704(a)(2).

B. Primary Jurisdiction

The Eighth Circuit also found that the district court has concurrent jurisdiction with the FHWA (Pet. App. at 15a), and that the doctrine of primary jurisdiction no longer justified dismissal of Respondents' complaint (Pet. App. at 16a). The court of appeals noted that the agency declined to exercise jurisdiction over the matter, expressing "its view that resolution of [Respondents'] . . . claims 'are fairly straightforward matters clearly within the competence of a court to resolve.' " (Pet. App. at 15a (*citing* the FHWA Notice, Pet. App. at 29a)). On the basis of *Heckler v. Chaney*, 470 U.S. 821, 837 (1985) ("the presumption that agency decisions not to institute proceedings are

unreviewable" militates against courts compelling agencies to exercise jurisdiction), the court of appeals properly directed the district court to exercise its jurisdiction over the case. (Pet. App. at 16a).

II. THERE IS NO CONFUSION AMONG THE LOWER COURTS

Petitioners do not argue that there is a split of authority among the courts of appeals over whether 49 U.S.C. § 14704(a) creates a private right of action to enforce federal motor carrier leasing regulations. (Pet. at 7). Rather, Petitioners focus on two district court opinions interpreting an unrelated *rail carrier* civil enforcement statute (49 U.S.C. § 11704), which merely authorizes civil suits to enforce orders of the Surface Transportation Board ("the Board"). *DeBruce Grain, Inc. v. Union Pacific R.R.*, 983 F. Supp. 1210, 1283-84 (W.D. Mo. 1997), *aff'd on other grounds*, 149 F.3d 787 (8th Cir. 1998); *City of Laredo v. Texas Mexican Ry.*, 935 F. Supp. 895, 897-898 (S.D. Tex. 1996).

Petitioners' claim that those two *rail carrier* opinions are at odds with the Eighth Circuit's instant holding – that the *motor carrier* civil enforcement statute (49 U.S.C. § 14704) authorizes suits to enforce motor carrier leasing regulations of the DOT – is misguided. Petitioners overlook the fact that the federal statutory regime set forth in Title 49, U.S.C. treats rail carriers and motor carriers differently.[4] The crucial distinction between the provisions dealing with rail carriers and those dealing with

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[4] Interstate transportation by rail carriers is primarily governed by statutes appearing in "Part A – Rail" of Subtitle IV

motor carriers lies in the respective grants of jurisdiction to the Board in Part A (Rail) and to the DOT in Part B (Motor Carriers) of Subtitle IV of Title 49, U.S.C. *See* 49 U.S.C. § 10501 (App. 1-App. 3); 49 U.S.C. § 13501 (App. 4).

Under Part A, the section entitled "General Jurisdiction" provides the Board "exclusive" jurisdiction over rail carrier transportation. *See* 49 U.S.C. § 10501(b). This statute also specifies that the remedies provided in Part A are not only exclusive, but that they "preempt the remedies provided under Federal or State law." *Id.* Under Part B, the corresponding motor carrier section entitled "General Jurisdiction" states merely that the DOT[5] has jurisdiction over certain motor transport, mostly interstate. 49 U.S.C. § 13501. Unlike the corresponding rail provision, the motor carrier provision does *not* make the DOT's jurisdiction over certain motor carrier issues *exclusive*. On the contrary, Part B remedies are "in addition to remedies existing under other law or common law." 49 U.S.C. § 13103.

("Interstate Transportation") of Title 49 ("Transportation") of the United States Code. *See generally,* 49 U.S.C. §§ 10101-11908. Interstate transportation by motor carriers is primarily governed by statutes appearing in "Part B – Motor Carriers, Water Carriers, Brokers, and Freight Forwarders" of Subtitle IV of Title 49, United States Code. *See generally,* 49 U.S.C. §§ 13101-14914.

[5] Section 13501 also grants jurisdiction to the Board for limited motor carrier functions, such as rate determinations. It is the DOT, however, that has jurisdiction over the background commercial rules for owner-operator leasing that are at issue in this case. *See* 49 U.S.C. §§ 13301(a), 14102; *see supra* Section A. Regulatory Context.

This distinction explains why courts interpreting the private enforcement provision of Part A for rail carriers (49 U.S.C. § 11704) come to a different result than the Eighth Circuit did in the instant case when interpreting the motor carrier private enforcement provision under Part B (49 U.S.C. § 14704). In fact, both rail cases cited by Petitioners *explicitly* recognized that the rail carrier jurisdictional statute, Section 10501, grants "exclusive" jurisdiction to the Board, thus limiting the Part A rail carrier private enforcement statute, Section 11704, to merely authorizing suits to enforce the orders of the Board, as opposed to its regulations. *See DeBruce*, 983 F. Supp. at 1283; *City of Laredo*, 935 F. Supp. at 897-98. The differences in result do not reflect confusion among the lower courts. Instead, they simply reflect the material differences between Part A and Part B of Subtitle IV, Title 49, U.S.C. regarding the extent of agency jurisdiction over two very different modes of transportation.

The only motor carrier case upon which Petitioners rely to portray confusion in the lower courts is an unreported district court decision – *Renteria v. K & R Transp., Inc.*, Case No. CV-98-290MRP (C.D. Cal. Feb. 23, 1999). (Pet. App. at 54a-66a). The district court in *Renteria* made the same error that Petitioners urge upon this Court, applying the *rail carrier* precedent of *DeBruce* and *City of Laredo* (interpreting Part A, Subtitle IV, Title 49) to the *motor carrier* statutes (Part B, Subtitle IV, Title 49) before it. The fallacy in this reasoning is described above.

Another error in the *Renteria* opinion that Petitioners press upon this Court is the mistaken conclusion that the absence in 49 U.S.C. § 14705 of a specific statute of

limitations for private suits to enforce motor carrier regulations (via Section 14704) supports the inference that no such private right of action was ever intended by Congress. (Pet. at 10-13). Petitioners and the *Renteria* court, however, completely overlook the fact that in 1990, Congress provided a "catch-all" limitations period of four years for any "civil action arising under an Act of Congress enacted after" December 1, 1990, unless a different period was otherwise provided by law. 28 U.S.C. § 1658 (App. 1). Given this "catch-all" statute of limitations, Petitioners cannot convincingly argue that the absence of a specific limitations provision in Section 14705 suggests that Congress did not intend to establish a private right of action. Moreover, such an inference must be rejected in light of Congress' clear expression of intent to the contrary contained in the congressional committee reports accompanying the passage of the ICCTA of 1995, discussed *supra*.

Petitioners are wrong to suggest that there is confusion among the lower courts that this Court needs to address. Given the well-reasoned opinion by the Eighth Circuit in this case, the decision of the California district court in *Renteria* is unlikely to cause confusion.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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28 U.S.C. § 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

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49 U.S.C. § 10501. General jurisdiction

(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is –

(A) only by railroad; or

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in –

(A) a State and a place in the same or another State as part of the interstate rail network;

(B) a State and a place in a territory or possession of the United States;

(C) a territory or possession of the United States and a place in another such territory or possession;

(D) a territory or possession of the United States and another place in the same territory or possession;

(E) the United States and another place in the United States through a foreign country; or

(F) the United States and a place in a foreign country.

(b) The jurisdiction of the Board over –

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c)(1) In this subsection –

(A) the term "local governmental authority" –

(i) has the same meaning given that term by section 5302(a) of this title; and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term "mass transportation" means transportation services described in section 5302(a) of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to –

(i) safety;

(ii) the representation of employees for collective bargaining; and

(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before the effective date of the ICC Termination Act of 1995. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

(Added Pub.L 104-88, Title I, § 102(a), Dec. 29, 1995, 109 Stat. 807.)

49 U.S.C. § 13501. General jurisdiction

The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier –

(1) between a place in –

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

(Added Pub.L. 104-88, Title I, § 103, Dec. 29, 1995, 109 Stat. 859.)